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IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

October Term, 1983

RICKY RAY RECTOR.....Petitioner

vs.

STATE OF ARKANSAS.....Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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QUESTIONS PRESENTED

I. WHETHER THE REFUSAL OF THE SUPREME COURT OF ARKANSAS TO COMPARE PETITIONER'S DEATH SENTENCE, TAKING INTO ACCOUNT PETITIONER'S PRESENT MENTAL CONDITION, RESULTED IN A VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS PER FURMAN V. GEORGIA?

II. WHETHER PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO TRIAL BY A JURY COMPOSED BY A CROSS-SECTION OF THE COMMUNITY AND PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO A TRIAL BY A JURY WHICH IS NOT "GUILT PRONE" WERE VIOLATED BY THE STATE'S ACT OF DEATH-QUALIFYING THE JURY WHICH DETERMINED PETITIONER'S GUILT OR INNOCENCE?

III. WHETHER REQUIRING PETITIONER TO STAND TRIAL IN A CAPITAL CASE, GIVEN HIS MENTAL CONDITION, WAS A VIOLATION OF THE FOURTEENTH AMENDMENT?

IN THE SUPREME COURT

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ON PETITION FOR WRIT OF CERTIORARI
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

Petitioner, Ricky Ray Rector, a prisoner facing death by electrocution in the Arkansas electric chair, petitions for a writ of certiorari to review the affirmance of his conviction and sentence by the Supreme Court of Arkansas.

OPINION BELOW

This petition is a direct request for review of the affirmance of the trial court judgment and sentence in this case by the Supreme Court of Arkansas. The only opinion of the Supreme Court of Arkansas is reported in Rector v. State, 280 Ark. 385 (October 17, 1983). A copy of the opinion is included in the appendix.

JURISDICTION

The opinion of the Supreme Court of Arkansas was rendered on October 17, 1983. Petitioner filed a timely motion for

rehearing. The motion for rehearing was denied on November 21, 1983.

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3), with Petitioner asserting here, and having asserted below, a deprivation of rights secured by the Constitution of the United States made applicable to the States through the Due Process Clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Sixth Amendment, United States Constitution:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, ..."

Eighth Amendment, United States Constitution:

"...nor cruel and unusual punishments inflicted."

Fourteenth Amendment, United States Constitution:

"Section 1. ... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ark. Stat. Ann. §41-1301:

"The following procedures shall govern trials of persons charged with capital murder:

(1) The jury shall first hear all evidence relevant to the charge or charges and shall then retire to reach a verdict of guilt or innocence.

(2) If the defendant is found not guilty of the capital offense charged, but guilty of a lesser included offense, sentence shall be determined and imposed as provided by law.

(3) If the defendant is found guilty of capital murder, the same jury shall sit again in order to hear additional evidence as provided by subsection (4) hereof, and to determine sentence in the manner provided by section 1302 (§41-1302); except that, if the state waives the death

penalty, stipulates that no aggravating circumstance exists, or stipulates that mitigating circumstances outweigh aggravating circumstances, no such hearing shall be required, and the trial court shall sentence the defendant to life imprisonment without parole.

(4) In determining sentence, evidence may be presented to the jury as to any matters relating to aggravating circumstances enumerated in section 1303 (§41-1303), or any mitigating circumstances. Evidence as to any mitigating circumstances may be presented by either the state or the defendant regardless of its admissiblity under the rules governing admission of evidence in trials of criminal matters; but the admissibility of evidence relevant to the aggravating circumstances set forth in section 1303 (§41-1303) shall be governed by the rules governing the admission of evidence in such trials. The state and the defendant or his counsel shall be permitted to present argument respecting sentencing. (Acts 1975, No. 280, §1301, p. 500.)"

Ark. Stat. Ann. §41-1501(1):

"A person commits capital murder if:

(b) with the premeditated and deliberated purpose of causing the death of any law enforcement officer, jailer, prison official, fireman, judge or other court official, probation officer, parole officer, or any military personnel, when such person is acting in line of duty, he causes the death of any person;"

STATEMENT OF THE CASE

On March 22, 1981, Petitioner shot three persons at Tommy's Restaurant in Conway, Faulkner County, Arkansas. One of the persons was killed. Petitioner was charged with murder and two counts of first degree battery. On March 24, 1981, Officer Robert Martin of the Conway Police Department went to the home of Petitioner's mother to arrest Petitioner. There in the presence of three witnesses Petitioner shot Officer Martin twice with a .38 caliber pistol. Petitioner then walked outside the house and shot himself through the head. Officer Martin died at the scene.

On the night of March 24, 1981, surgeons at the University of Arkansas School of Medicine in Little Rock performed a

debridgement upon Petitioner. The effect of the operation was that of a pre-frontal lobotomy.

On March 25, 1981, as a result of the shooting of Officer Martin, Petitioner was charged with capital murder committed in violation of Ark. Stat. Ann. §41-1501(1)(b)(Repl. 1977).

Petitioner was tried to a jury in Faulkner Circuit Court on the first degree murder and battery charges. He was convicted and sentenced to life imprisonment plus 40 years imprisonment. This conviction was affirmed by the Arkansas Supreme Court in Rector v. State, 277 Ark. 17, 638 S.W.2d 672 (1982).

After the convictions for first degree murder and battery were affirmed Petitioner was tried to a jury for capital murder. Trial was held November 8 through November 10, 1982. Petitioner was convicted and sentenced to death. The conviction was affirmed by the Arkansas Supreme Court in Rector v. State, 280 Ark. 385 (October 17, 1983).

Prior to both trials, Petitioner had filed motions alleging he was incompetent to stand trial. Extensive hearings were held on these motions on September 28, 1981, and October 25, 1982. The evidence adduced at the first hearing was made a part of the record at the second hearing. Prior to the trial of capital murder, Petitioner moved that the jury which determined his guilt/innocence not be death-qualified. The motion was denied.

On appeal Petitioner argued that given his brain injury the Arkansas Supreme Court should compare death sentences and reduce Petitioner's capital conviction to life without parole.

From the rulings of the Arkansas Supreme Court that (1) Petitioner was competent to stand trial; (2) Petitioner was not constitutionally entitled to two juries; and (3) there was necessity that the Arkansas Supreme Court compare death sentences

taking into account Petitioner's current condition, Petitioner brings this Petition for Writ of Certiorari and asks that the Court vacate his conviction and sentence.

REASONS FOR GRANTING THE WRIT

I.

THE REFUSAL OF THE SUPREME COURT OF ARKANSAS TO COMPARE PETITIONER'S DEATH SENTENCE, TAKING INTO ACCOUNT PETITIONER'S PRESENT MENTAL CONDITION, RESULTED IN A VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS PER FURMAN V. GEORGIA.

On June 29, 1972, this Court decided Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972). In response to Furman most states amended their death penalty statutes in an effort to develop constitutionally permissible death penalty procedures. Gregg v. Georgia, 428 U.S. 153, 49 L.Ed.2d 859, 96 S.Ct. 2909 (1976), Footnote 23. Two basic procedures were adopted. Some states attempted to set detailed requirements for jury and judicial actions in death cases. Some states made the death penalty mandatory in certain cases. The Arkansas Legislature detailed jury procedure in capital cases but made no reference to differing judicial duties in capital cases. Ark. Stat. Ann. §41-4706.

On July 2, 1976, this Court decided five cases where the new death penalty statutes were at issue. Three cases where the statutory scheme was similar to that in Arkansas were affirmed. Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909 49 L.Ed.2d 859 (1976). Proffit v. Florida, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976). Zurek v. Texas, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976). Two cases where the death penalty was mandatory was reversed. Woodson and Waxton v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976). Roberts v.

Louisiana, 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976). The Arkansas Supreme Court was ordered to reconsider the case of Carl Albert Collins in light of these five cases.

In Collins v. State, 261 Ark. 195, 548 S.W.2d 106 (1977), the Arkansas Supreme Court, in a 4-3 decision, determined that the Arkansas statute came within the perview of Gregg, Proffit and Zurek and hence was constitutional. The Arkansas Supreme Court recognized that the Gregg mandate could be satisfied only where judicial review determined whether the jury imposition of the death sentence is arbitrary and capricious. This recognition was well-founded. In Gregg, the plurality stated:

> "As an important additional safeguard against arbitrariness and caprice, the Georgia statutory scheme provides for automatic appeal of all death sentences to the State's Supreme Court. That court is required by statute to review each sentence of death and determine whether it was imposed under the influence of passion or prejudice, whether the evidence supports the jury's finding of a statutory aggravating circumstance, and whether the sentence is disproportionate compared to those sentences imposed in similar cases. §27-2537(c) (Supp. 1975)."
>
> ...
>
> "Finally, the Georgia statute has an additional provision designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants. The new sentencing procedures require that the State Supreme Court review every death sentence to determine whether it was imposed under the influence of passion, prejudice, or any other arbitrary factor, whether the evidence supports the findings of a statutory aggravating circumstance, and 'whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.' §27-2537(c)(3) (Supp. 1975) Footnote 56. In performing its sentence-review function, the Georgia court has held that 'if the death penalty is only rarely imposed for an act or it is substantially out of line with sentences imposed for other acts it will be set aside as excessive.' Coley v. State, 231 Ga., at 834, 204 S.E.2d, at 616. The court on another occasion stated that 'we view it to be our duty under the similarity standard to assure that no death sentence is affirmed unless in similar cases throughout the state the death penalty has been imposed generally...' Moore v. State, 233 Ga. 861, 864, 213 S.E.2d 829, 832 (1975). See also Jarrell v. State, supra, 234 Ga., at 425, 216 S.E.2d, at 270 (standard is whether 'juries generally throughout the state have

> imposed the death penalty'); Smith v. State, 236 Ga. 12, 24, 222 S.E.2d 308,318 (1976) (found 'a clear pattern' of jury behavior)."

In Collins v. State, the issue whether the Arkansas Supreme Court was authorized and equipped to review death sentences as required by Gregg was hotly contested. Three dissenting justices of the Arkansas Supreme Court argued that the Arkansas statute did not provide the Georgia safeguards.

From this beginning the Arkansas Supreme Court commenced review of jury imposition of the death penalty to determine whether that imposition was arbitrary and capricious. This review was made by taking an overall view of the facts and comparing with jury findings in similar cases. As stated by Justice Hickman, one of the dissenters in Collins, in his concurring opinion in Henry v. State, 278 Ark. 478, 647 S.W.2d 419 (1983):

> "...In Collins, we abandoned the notion there must be a legal mistake in order to reduce a sentence in a death case. We made a pact, so to speak, that we would, on our own, make certain the death penalty was not the result of passion, prejudice or excessive under the circumstances. We have to keep that pact as a matter of integrity."

Petitioner has been unable to locate any capital case since Collins where the Arkansas Supreme Court has expressly refused to review jury imposition of the death penalty. In refusing to determine whether Petitioner's death penalty should be imposed, the Arkansas Supreme Court stated:

> "Finally, it is argued that upon comparing this case with other capital cases we should reduce the penalty to a life sentence without parole. When we consider that in a period of two days Rector killed one man, for which he was convicted of murder, committed aggravated assaults upon two others, and then deliberately shot a police officer who had done nothing to provoke an attack, we find nothing arbitrary in this death sentence as compared to our cases.

> Counsel insist, however, that because Rector's self-inflicted brain injury had substantially the same effect as a frontal lobotomy, causing him to be mildly retarded mentally and to be somewhat unemotional, the State of Arkansas should not permit the execution of a person in that condition. This case differs, however, from Giles v. State, 261 Ark. 413, 549 S.W. 2d 479 (1977), cert. denied 434 U.S. 894, in that there the jury arbitrarily disregarded an impaired mental condition that existed when the crime was committed, which led us to reduce the sentence. Here Rector had no such mental impairment until he attempted suicide after the crime - facts that were before the jury. In our opinion such circumstances arising after the crime affect the matter of clemency and should properly be addressed to the Governor, who has the facilities for investigating all the facts. Although we may reduce a death sentence to life without parole, and have done so in the past, that action is taken as a matter of law, not as an act of clemency."

Petitioner recognizes that this is an unusual case in that the injury, which resulted in Petitioner's current condition, occurred shortly after Officer Martin was shot. However, the self-inflicting of the wound was part of the same incident. It occurred within seconds after Officer Martin was shot. Petitioner submits that this factor in no way justifies the refusal of the Arkansas Supreme Court to consider Petitioner's current condition in determining whether the death penalty should be imposed. The refusal to review imposition of the death sentence renders Arkansas' death penalty statute unconstitutional as being in violation of the Eighth and Fourteenth Amendments of the Federal Constitution. Both this Court and the Arkansas Supreme Court have recognized that absent some judicial determination whether the jury's action was arbitrary and capricious, the death sentence cannot be imposed. Here the Arkansas Supreme Court has expressly refused to consider whether the jury's imposition of the death sentence upon one in Petitioner's condition violates the Eighth and Fourteenth Amendments. The Arkansas Supreme Court is expressly refusing to compare Petitioner's death sentence, taking into account Petitioner's condition which was created as a part of the same incident resulting in the death of Officer Martin. Absent the judicial review promised by the Arkansas Supreme Court in Collins

there is no determination whether the jury's action was arbitrary and capricious. Hence, the mandate of Gregg, recognized by the Arkansas Supreme Court in Collins, has been ignored.

The Arkansas Supreme Court's opinion assumes Petitioner sought clemency in that Court. Petitioner did not seek clemency. Petitioner sought that the Arkansas Supreme Court Court determine whether the death penalty, as a matter of law, should be imposed upon Petitioner. The issue squarely presented to the Arkansas Supreme Court was whether imposition of the death penalty upon Petitioner was cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. This was a question of law for the Court, not a question of mercy for the Governor. Yet, the Arkansas Supreme Court expressly refused to address this issue and abandoned Collins. By abandoning Collins the Arkansas Supreme Court rendered the Arkansas death penalty statute unconstitutional under the Gregg mandate.

The Arkansas Supreme Court reasoned that the issue should be one of clemency for the Executive since the Executive has methods of investigation not available to the Court. This argument fails for two reasons. First, this problem should have prevented the Arkansas Supreme Court from taking the position it took in Collins if the problem was to be determinative. It is not a reason for abandoning Collins, and hence Gregg, in midstream. Secondly, the facts were available to the Arkansas Supreme Court. Nine expert witnesses, psychiatrists, psychologists or other specialists, testified regarding Petitioner's mental condition. Two of these persons testified twice. Also, various lay witnesses testified regarding Petitioner's condition. How can it be said that the facilities for investigation are needed when this mountain of testimony is before the Court?

Petitioner respectfully submits that a conflict exists between the Arkansas Supreme Court and this Court. This conflict

clearly justifies the granting of certiorari in this matter.

II.

PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO TRIAL BY A JURY COMPOSED BY A CROSS-SECTION OF THE COMMUNITY AND PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO A TRIAL BY A JURY WHICH IS NOT "GUILT PRONE" WERE VIOLATED BY THE STATE'S ACT OF DEATH-QUALIFYING THE JURY WHICH DETERMINED PETITIONER'S GUILT OR INNOCENCE.

On August 5, 1983, the Federal District Court for the Eastern District of Arkansas issued its opinion in Grigsby v. Mabry, 483,F.Supp. 1372 (E.D.Ark., August 5, 1983). In a 91 page opinion the chief judge for the Federal District Court reviewed law, evidence and history of the death penalty in Arkansas. The Federal District Court concluded that the present Arkansas procedure in death cases is unconstitutional for two reasons. First, the Sixth and Fourteenth Amendment right to a jury drawn from a cross-section of the community was not being granted. Secondly, the Sixth and Fourteenth Amendment right to a fair trial was being violated since the jury selection process resulted in selection of a "guilt prone" jury. The district judge ruled after an extensive evidentiary hearing which had been ordered by the Eighth Circuit Court of Appeals. In Grigsby v. Mabry, 637 F.2d 525 (1980), the Eighth Circuit held:

> "The record demonstrates that Grigsby did not receive a full and fair evidentiary hearing in state court on three factual issues: (1) whether death-qualified jurors are more likely to convict than jurors selected without regard for their views on the death penalty, (2) whether death-qualified jurors are more likely to convict of a higher degree of murder than jurors selected without regard for their death penalty views, and (3) whether the jurors in this case were in fact death-qualified. These questions must be answered because if they are answered in the affirmative, Grigsby has made a case that his constitutional rights

have been violated and he would be entitled to a new trial."

On September 7, 1983, this case was argued before the Arkansas Supreme Court. On October 17, 1983, the Arkansas Supreme Court rendered its opinion which is almost entirely a scathing rebuttal to the opinion of the Federal District Court in Grigsby. Obviously, an empasse has been reached between the Federal District Court and the Arkansas Supreme Court. It should be noted that in light of the language used by the Eighth Circuit Court in its remand to the Federal District Court this conflict extends to one between the Arkansas Supreme Court and the Eighth Circuit Court of Appeals. Obviously, the empasse between the Federal District Court and the Arkansas Supreme Court has reached the point that the basic issues in this important matter have been clearly and forcefully articulated.

It should be noted that this conflict now exists between the Federal Circuit Courts of Appeal. The Fifth Circuit, as cited by the Arkansas Supreme Court, has found a procedure similar to the one used in Arkansas constitutional. See Spinkellink v. Wainwright, 578 F.2d 582 (5th Circuit 1978) and Smith v. Baleom, 660 Fed.2d 573 (5th Circuit 1981). This directly contradicts the Eighth Circuit holding that if Grigsby proved the points alleged he had made a case for a constitutional violation.

Surely the issue is ripe for a decision by this Court. There is a conflict between the Circuit Courts of Appeal. There is a bitter conflict between the Federal District Court in Arkansas and the Arkansas Supreme Court. Cases are regularly being tried where neither court nor attorney knows whether the procedure being used is constitutional. These matters will be routinely presented by habeas corpus to the Federal District Court after a decision by the Arkansas Supreme Court upholding the procedure. Petitioner respectfully submits that the time has come for this

Court to resolve this important, fundamental issue.

III.

REQUIRING PETITIONER TO STAND TRIAL IN A CAPITAL CASE, GIVEN HIS MENTAL CONDITION, WAS A VIOLATION OF THE FOURTEENTH AMENDMENT.

Because of Petitioner's self-inflicted gunshot wound and subsequent surgical procedure, Petitioner's ability to stand trial was brought into issue. The State first had Petitioner examined by Dr. Mary Kaczenski. Dr. Kaczenski found that Petitioner was not competent to stand trial as a result of amnesia, loss of emotional reactivity and loss of motivation. She found lack of fringing memory loss or malingering and that Petitioner's responses were typical of one who had a total frontal lobotomy. The State did not accept its own expert's opinion but rather had Petitioner examined by others, who concluded Petitioner was competent to stand trial. Petitioner's expert witnesses concluded Petitioner was not competent to stand trial.

This Court has held that the states must have and use procedures to determine whether a defendant is competent to stand trial. A state's failure to do so deprives a defendant of due process. Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15L.Ed.2d 815 (1976); Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 869, 43L.Ed.2d 103 (1975). Petitioner was not deprived of due process as a result of the State's failure to use an adequate procedure to determine whether Petitioner was competent to stand trial. Rather, the State used a system fair on its face to determine whether Petitioner was competent. The State, however, perverted this system so that by going through the motions the lack of substantive due process would be hidden in the appearance of procedural due process. The State did locate expert witnesses at

the Arkansas State Hospital who testified Petitioner was competent at the time of trial. But the State refused to accept the finding of its own expert as well as an expert at the University of Arkansas Medical Center. In effect the State of Arkansas shopped for experts until it found someone who would report that Petitioner was competent to stand trial. This Court should grant certiorari to determine the important issue whether the State's actions constitute a violation of the due process clause of the Fourteenth Amendment.

CONCLUSION

The constitutional violations which have occurred in this case raise three important issues which should be decided by this Court. For this reason the petition for writ of certiorari should be granted and the matter set for briefing and argument. Petitioner's conviction and sentence should be set aside, and the matter remanded to the Arkansas Courts for retrial.

Respectfully submitted,

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I, Clarence Daniel Stripling, counsel for petitioner herein, do hereby certify that a sufficient number of true and correct copies of the foregoing petition and accompanying appendix have been served on opposing counsel this Sixth day of January, 1984, by mailing said copies, first class postage prepaid, to the Honorable J. Steven Clark, Office of the Attorney General, Justice Building, Little Rock, Arkansas, 72201.

Clarence Daniel Stripling

APPENDIX "A"

RICKY RAY RECTOR

vs. No. CR83-39

STATE OF ARKANSAS

Supreme Court of Arkansas
Opinion delivered October 17, 1983

GEORGE ROSE SMITH, Associate Justice. Ricky Ray Rector was charged with capital murder in the shooting of Bob Martin, a Conway city policeman acting in the line of duty. Ark. Stat. Ann. §41-1501(1)(b) (Repl. 1977). In a bifurcated trial the jury returned a verdict of guilty and imposed the death penalty. Nine separate points for reversal are argued. Counsel state with commendable candor that several other possible points are not being urged, for want of merit. We affirm the judgment.

The first stage of the trial was brief, the facts being essentially undisputed. On march 22, 1981, Rector, age 28, shot and killed Arthur Criswell at a restaurant in Conway and wounded two other men. For two days the police searched for Rector. On the afternoon of March 24 Officer Martin, in uniform, went to the home of Rector's mother, in Conway. While the officer was talking to Rector's mother, sister, and nephew, Rector entered the back of the house and came into the living room. Rector and the officer knew each other and may have exchanged a few words of greeting. Within a few minutes Rector, who had not joined in the conversation, drew a pistol and shot Officer Martin twice. Rector left by the back door and said to his nephew's wife, whom he met crossing the yard: "I just shot that cop." A few moments later Rector attempted suicide by shooting himself in the forehead, the bullet entering the front part of his brain. That evening the wound was surgically cleaned and closed.

Among the points for reversal, we first consider the argument that death-qualified juries are unconstitutional. That question was left open in Witherspoon v. Illinois, 391 U.S. 510 (1968), because the Court found the evidence too tentative and fragmentary to support a firm conclusion. We do not take that disposition of the issue to carry an implication that the Court would necessarily have disapproved death-qualified juries if the proof had been complete.

Since Witherspoon the state courts have uniformly upheld the validity of death-qualified juries. (The force of our own cases is conceded by the appellant, who asks that they be overruled.) The federal courts of appeal, however, are not in agreement. In the Seventh Circuit the court left the question open in 1976, finding the proof still inconclusive. United States ex rel. Clark v. Pike, 538 F.2d 750 (7th Cir. 1976). In the Fifth Circuit the court assumed, without deciding, that death-qualified jurors are prone to convict, but the court nevertheless upheld the death-qualified jury. Its reasoning was in part that a juror implacably opposed to capital punishment might choose to hang the jury even in the fact of overwhelming proof, with the possibility that a succession of such mistrials could defeat the State's attempts to enforce its death penalty. Spinkellink v. Wainwright, 578 F. 2d 582 (5th Cir. 1978), followed with further discussion in Smith v. Balkcom, 660 F. 2d 573 (5th Cir. 1981).

In our circuit, the Eighth, the court has apparently interpreted Witherspoon to mean that if death-qualified juries had then been shown to favor the prosecution, the Supreme Court would have prohibited such juries. Grigsby v. Mabry, 637 F. 2d 525 (8th Circ. 1980). We so understand the Grigsby opinion simply because the majority, without discussing the issue on its merits, flatly stated that if it can be shown that death-qualified juries are more likely to convict, "Grigsby has made a case that his

constitutional rights have been violated and he would be entitled to a new trial." The case was accordingly remanded to the Arkansas district court to allow it to determine as a question of fact whether death-qualified juries are prone to convict.

The Grigsby opinion, remanding the case, was delivered on November 18, 1980. The district court completed its evidentiary hearing in July, 1981. The district court then delayed the case for more than two years, with Chief Judge Eisele finally issuing a 91-page opinion on August 5, 1983, declaring death-qualified juries to be unconstitutional. Grigsby v. Mabry, ___F. Supp. __ (E.D. Ark. 1983). Since that opinion is the first one not only examining the factual issues in detail but also banning the death-qualified jury, we have thought it best to re-examine the issue in the light of that opinion.

At the outset we must clear the air by commenting on a ten-page analysis in the district court's Grigsby opinion, purportedly tracing the history of jury selection in capital cases in Arkansas and criticizing this court for its recent decisions in that field of law. Manuscript opinion, pp. 71-81. The district judge evolved a theory (based on our decision in Atkins v. State, 16 Ark. 568 (1855), and on an 1869 statute permitting a challenge for implied bias if a juror had such conscientious opinions as would preclude him from finding the defendant guilty, Ark. Stat. §43-1920 (Repl. 1977) that the Arkansas law originally permitted a challenge for cause only if the venireman could not find the defendant guilty, regardless of the venireman's attitude about the death penalty. The opinion, noting that our later cases permit the challenge if the venireman cannot impose the death penalty, then puts the question: "When and how did the Arkansas law change?"

The court answers its own question by concluding that

between 1968 and 1970, and in response to the ruling in Witherspoon:

> (The Arkansas Supreme Court) decided to no longer adhere to the limitation and exclusion of jurors as provided by the statute. Instead, it decided that if a juror could never vote to impose the death penalty, he could be excluded altogether. No inquiry apparently had to be made as to whether the juror was nevertheless capable of rendering a fair and impartial verdict upon the guilt or innocence of the defendant. . . .
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> . . . .
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> The bottom line of this analysis is that prior to Witherspoon, Arkansas focused on the most traditional and accepted of voir dire inquiries: whether a prospective juror's scruples would preclude him from rendering a verdict of guilty and the court relied directly on the legislatively mandated language. After Witherspoon, the court no longer relied on the exclusion statute but simply adopted Witherspoon as the predicate for a judicially established Arkansas rule that allowed the exclusion of prospective jurors from the guilt-innocence phase on the ground that they could never impose the death penalty if called upon to assess a penalty. (District Court's italics.)

There is more to the same effect.

The district judge's decidedly critical analysis of our cases would be disturbing if it were not so readily apparent that the analysis and criticism are totally and demonstrably wrong. Our decision in Atkins did not even remotely contemplate that a jury might first find a defendant guilty of a capital offense and then select or reject the death penalty. The simple fact, evidently unknown to the district court in Grigsby, is that from statehood until 1915 the death penalty was mandatory in all capital cases, the jury taking no part in fixing the penalty. Rev. Stat., ch. 44, div. 3, art. 1, §7 (1837). That was of course true in 1869, when the implied bias provision was enacted. As reflected by scores of appellate records in the state's archives, the usual guilty verdict was: "We, the jury, find the defendant guilty of first-degree murder, as charged in the indictment." That ended the trial, with the jury being discharged and the court entering the judgment as fixed by law.

Thus this court did not change its position in response to Witherspoon. We changed a half century earlier, to give effect to the 1915 statute which for the first time recognized life imprisonment as a permissible sentence in Arkansas and made it an alternative punishment in all capital cases. Ark. Stat. Ann. §43-2153. All this was fully explained almost twenty years before Witherspoon when we said in Needham v. State, 215 Ark. 935, 224 S.W.2d 785 (1949):

> During the selection of the jury the prosecuting attorney was permitted to ask each juror if he had any conscientious scruples against the imposition of the death penalty. The statute defines implied bias as including such conscientious opinions as would preclude the juror from finding the defendant guilty of an offense punishable by death. Ark. Stats. (1947), §43-1920. It is argued that the State should have been allowed to inquire only whether the juror's conscience would preclude his finding the defendant guilty, thereby permitting the service of jurors who would vote for a verdict of guilty but approve only the alternative penalty of life imprisonment. The history of our statutes rebuts this suggestion. When the statute defining implied bias was enacted the death penalty was mandatory; so it was then sufficient for the legislature to refer merely to a finding of guilt, the punishment following as a matter of course. Not until 1915 did the legislature give the jury the option of imposing life sentences in capital cases. Ibid., §43-2153. The legislature evidently meant for the jury to exercise its discretion in selecting the punishment, but it is obvious that a juror can exercise no discretion if his conscience does not permit him to vote for the death penalty in any case. The statutory history in Idaho has been identical with our own, and there it is held proper for the State to inquire whether a juror has scruples against capital punishment. State v. Wilson, 41 Idaho 616, 243 P. 359. Among many other cases approving this inquiry when the jury in its discretion may impose a life sentence are: Shank v. People, 79 Colo. 576, 247 P. 559; State v. Leuch, 198 Wash. 331, 88 P. 2d 440; State v. Favorito, 115 N.J.L. 197, 178 A. 765.

We do find it bewildering that the Grigsby opinion, at page 80, quoted the very next paragraph in the Needham opinion without attaching any weight to what had just preceded it.

The federal trial court invalidated the death qualification of jurors on two grounds: "first, it denies the accused a trial by a jury representative of a cross-section of the community; and

second, it creates juries that are conviction-prone." In the trial of the case at bar those grounds were relied upon in Rector's motion for a bifurcated trial with two juries. That motion was supported by a stipulation, agreed to by the prosecution, that Dr. Robert M. Berry is an expert in the area and would testify in conformity with his recent article, Death-Qualification and the "Fireside Induction", 5 UALR L.J. 1 (1982). The trial judge overruled Rector's motion.

We need consider only the federal court's second finding, that conviction-prone juries are for that reason unconstitutional, because if the state has a significant interest that justifies the exclusions inherent in the death-qualification process, it is immaterial that the excluded veniremen might be considered to be a distinctive group in the community. Duren v. Missouri, 439 U.S. 357 (1979).

For this discussion we assume, as did the court in Spinkellink, that death-qualified jurors are more prone to convict than those excluded under Witherspoon. The question, then, is this: Should jurors unalterably opposed to capital punishment be permitted to participate in the determination of guilt or innocence in capital cases? We are firmly of the view that their exclusion is proper, for either of two reasons.

First, we cannot regard conviction-proneness either as inherently wrong or as destructive of the juror's impartiality. In the various studies on the subject there is almost uniformly an undercurrent of thought, not expressed but easily sensed, that jurors who believe in the death penalty are by their nature barbarians in modern society. That view certainly condemns most Americans. The Arkansas General Assembly, in common with the legislatures in at least two thirds of the other states, re-enacted a death-penalty statute after the Supreme Court struck down all such laws in 1972. Needless to say, we as judges are

under a duty to respect and give effect to the laws made by the people or their representatives, no matter what our personal beliefs might be.

We have no reason to doubt that any tendency of a particular juror, not inflexibly opposed to the death penalty, to lean toward conviction in capital cases arises from one of the most deeply rooted feelings in human nature: an instinctive urge to condemn injustice. That urge, depending upon the comparative atrociousness of the particular offense, may vary from resentment to indignation, then to anger, and finally to outrage. It cannot be expected that a juror's ability to reason with complete detachment will be wholly unaffected by such an uncontrollable reaction of human nature to shocking injustice.

Human nature is not unconstitutional. From the earliest days of the common law, which ultimately created the jury system now embedded in our constitutions, the human urge to redress manifest wrongs played its part in the development of the criminal law. Justice Holmes, in tracing that development, pointed out that there are many crimes with respect to which the wrongdoer cannot be forced by the law to compensate the principal sufferer, as in the case of murder or manslaughter. Holmes then went on to show how, in that stipulation, punishment of the wrongdoer becomes necessary:

> In all these cases punishment remains an alternative. A pain can be inflicted upon the wrongdoer, of a sort which does not restore the injured party to his former situation, or to another equally good, but which is inflicted for the very purpose of causing pain. . . . The prisoner pays with his body.
>
> The statement may be made stronger still, and it may be said, not only that the law does, but that it ought to, make the gratification of revenge an object. This is the opinion, at any rate, of two authorities so great, and so opposed in other views, as Bishop Butler and Jeremy Bentham. . . .

> The first requirement of a sound body of law is, that it should correspond with the actual feelings and demands of the community, whether right or wrong. If people would gratify the passion of revenge outside the law, if the law did not help them, the law has no choice but to satisfy the craving itself, and thus avoid the greater evil of private retribution. At the same time, this passion is not one which we encourage, either as private individuals or as law-makers. Moreover, it does not cover the whole ground. There are crimes which do not excite it, and we should naturally expect that the most important purposes of punishment would be coextensive with the whole field of its application. (O. W. Holmes, The Common Law, pp. 40-42 [1881].)

As Holmes implied, some crimes do not excite the feeling of outrage in law-abiding citizens, but such lesser offenses are not punishable by death. Capital offenses characteristically comprise the most atrocious of crimes: the murder of helpless victims of rape or robbery and the murder of law enforcement officers, who stand in their line of duty between the ordinary citizen and the ruthless criminal. We may ask, why should the most cowardly and contemptible of criminals, merely by reason of the viciousness of their crimes, be favored in jury selection to a greater degree than any other accused person or any litigant in a civil case? The studies opposing death-qualified juries present no answer to that inquiry.

One would expect the most upright and moral veniremen to be the ones most deeply outraged by the type of crime for which the prosecution seeks the death penalty. Must we say that a jury composed of such veniremen cannot be regarded as impartial? On this point a clear indication of legislative policy is to be found in the federal and Arkansas statutes excluding convicted felons from jury service. 28 U.S.C. §1865; Ark. Stat. Ann. §39-102 (Supp. 1983). Unquestionably that exclusion is intended to bar from the jury box the one class of persons least likely to respect and give effect to the criminal laws. Are those statutes unconstitutional as depriving an accused of jurors <u>not</u> prone to convict? Obviously not. In harmony with that legislative point

of view, we can find no unconstitutional impartiality in the makeup of a death-qualified jury.

Our second reason for disagreeing with the Grigsby conclusion is a practical one: A jury system that has served its purpose admirably throughout the nation's history ought not to be twisted out of shape for the benefit of those persons least entitled to special favors. It has always been the law in Arkansas, except when the punishment is mandatory, that the same jurors who have the responsibility for determining guilt or innocence must also should the burden of fixing the punishment. That is as it should be, for the two questions are necessarily interwoven. By analogy, in civil cases we do not affirm a finding of liability but remand for a determination of damages only, because the possibility of a compromise in the jury room links the two issues inseparably together. See Fulbright v. Phipps, 176 Ark. 356, 3 S.W.2d 49 (1928); Manzo v. Boulet, 220 Ark. 106, 246 S.W.2d 126 (1952). No similar problem seems even to have arisen in our criminal cases.

Every accused person being tried by jury is protected by a host of constitutional guaranties, particularly significant ones being the continuing presumption of innocence, the state's burden of proof beyond a reasonable doubt, the privilege against self-incrimination, and the unanimous verdict. Even with those guaranties, however, we should not be averse to suggested changes in the jury system (which we think should be specified by legislation, not by judicial directive) if the resulting advantages could be shown to outweigh the disadvantages. So far we have not seen a suggested change meeting that test.

The Grigsby proposed modification, involving the same case being tried twice before successive juries, is the least appealing of the possibilities that have come to our attention. Such a second trial would be comparable to having the actors in a

play, after the audience had let the theater, repeat their lines in a second performance for a few spectators in a nearly empty house. Such repetitive trials could not be consistently fair to the State and perhaps not even to the accused.

Other suggested modifications have included (a) the empaneling of a second jury at the outset, to listen to the actual trial, and (b) the selection of alternate jurors to replace, in the penalty stage of the trial, those jurors who could not vote for the death penalty in any circumstances. Colussi, The Unconstitutionality of Death Qualifying a Jury Prior to the Determination of Guilt, etc., 15 Creighton L. Rev. 595 (1982). The difficulty with both those schemes for shuffling jurors in and out of the jury box is the separation of certain jurors' responsibility for the verdict from their responsibility for fixing the penalty. The two must go hand in hand, else the common law jury system no longer exists.

Finally, we perceive no answer to the practical objection posed by the Fifth Circuit Court in the Spinkellink case, supra. That is, what is to prevent a juror strongly opposed to capital punishment, in an effort to avoid feeling any responsibility for a death sentence, from choosing to hang the guilt-innocence jury by a vote for acquittal? If that stratagem became common knowledge, as it certainly would, the state's interest in the even-handed application of its laws, including the death penalty statute, could be frustrated. In fact, capital punishment could in effect be abolished, not by popular will but by a deliberate ruse.

Our conclusion is that death-qualification of the jury in capital cases has been and continues to be a constitutional procedure.

A second argument for reversal is that the trial judge should have found Rector incompetent to stand trial against the death penalty. A parallel question of competency was decided adversely to Rector on his earliest appeal from his conviction for the murder of Arthur Criswell. Rector v. State, 277 Ark. 17, 638 S.W.2d 672 (1982). The proof in the two cases is quite similar, although in this case a witness for the State, Dr. Hamed, thought that Rector's condition was much improved as compared to the time Dr. Hamed saw Rector soon after his surgery.

The expert proof is in sharp conflict, as it was on the other appeal. It is argued, however, that it takes a higher degree of competency to defend against the death penalty; so the two appeals are distinguishable. No doubt the issues may be more extensive in a death case, in which aggravating and mitigating circumstances are involved, but we do not discern any basis in the testimony for relating Rector's mental condition to the defense of a capital charge in particular. We must conclude, as we did on the earlier appeal, that the trial judge's decision is not clearly erroneous.

Third, it is insisted that the trial judge should have granted a sequestered voir dire examination of each prospective juror. A psychologist testified in generalities about the defects in an unsequestered voir dire, but he actually brought up nothing that a trial judge would not know from his own experience. The motion for sequestration was addressed to the trial court's discretion. Heffernan v. State, 278 Ark. 325, 645 S.W.2d 325 (1983). The only possibly prejudicial remark heard by other veniremen was too inconclusive to call for a mistrial--a fourth point argued for reversal. We find no abuse of the trial court's discretion in its rulings upon these matters.

A fifth point is that venireman McKenna was not so opposed to the death penalty as to warrant the court in excusing him for

cause. There are two answers to this contention. First, there was no objection to the excusal of McKenna. Perry v. State, 277 Ark. 356, 642 S.W.2d 865 (1982); Wicks v. State, 270 Ark. 781, 606 S.W.2d 366 (1980). Second, McKenna fundamentally took the position that he could not vote for the death penalty and perhaps not even for a life sentence without parole. He did say, however, in response to continued questioning by defense counsel: "I think - and this is really hypothetical - if I knew that the person accused would assuredly kill others in the future, then in that situation I guess I would reluctantly go along with it. Other than that, I would not." The Supreme Court has said, however, that a venireman should not be excused unless he is irrevocably committed to vote against the penalty of death "regardless of the facts and circumstances that might emerge in the course of the proceedings." (Our italics.) Davis v. Georgia, 429 U.S. 122 (1976), quoting a Witherspoon footnote. There was certainly no possibility that in the course of this trial McKenna would know that Rector would assuredly kill others in the future. Hence McKenna was properly excused for cause. If this is not so, then defense counsel is always in a position to present to a venireman a totally irrelevant hypothetical situation and, if the juror admits that he might vote for the death penalty in that case, insist that the juror is acceptable. We do not understand the Supreme Court's decisions to have gone that far.

Sixth, venireman Thacker, who was eventually excused by the defense, said that in some circumstances he thought the death penalty would be appropriate for the killing of a police officer, but he also said that his mind was not made up, there might be extenuating circumstances, and he would have to judge the case in the light of the total evidence. The appellant argues that the court should have sustained a challenge for cause, because Thacker's mind was set in favor of the death penalty, but we do

not so interpret the record. The challenge for cause was properly denied.

Seventh, the prosecutor did not inject remarks in the nature of argument in his opening statement to the jury, but the court at once gave a proper admonition to the jury. In view of the trial judge's unquestioned discretion in supervising the conduct of counsel, we find no abuse of that discretion in his denial of a mistrial.

Eighth, during the penalty phase of the trial the prosecutor requested that a personal note on an exhibit be removed before the jury saw the exhibit, but that request was denied. It is now argued that even the prosecutor's request called for a mistrial, because the ordinary rules of evidence do not apply to a defendant's presentation of mitigating proof. That statement is somewhat too broad, but in any event the incident was so decidedly trivial as not to require a mistrial.

Finally, it is argued that upon comparing this case with other capital cases we should reduce the penalty to a life sentence without parole. When we consider that in a period of two days Rector killed one man, for which was convicted of murder, committed aggravated assaults upon two others, and then deliberately shot a police officer who had done nothing to provoke an attack, we find nothing arbitrary in this death sentence as compared to our other cases.

Counsel insist, however, that because Rector's self-inflicted brain injury had substantially the same effect as a frontal lobotomy, causing him to be mildly retarded mentally and to be somewhat unemotional, the State of Arkansas should not permit the execution of a person in that condition. This case differs, however, from Giles v. State, 261 Ark. 413, 549 S.W.2d 479 (1977), cert. denied 434 U.S. 894, in that there the jury

arbitrarily disregarded an impaired mental condition that existed when the crime was committed, which led us to reduce the sentence. Here Rector had no such mental impairment until he attempted suicide after the crime - facts that were before the jury. In our opinion such circumstances arising after the crime affect the matter of clemency and should properly be addressed to the Governor, who has the facilities for investigating all the facts. Although we may reduce a death sentence to life without parole, and have done so in the past, that action is taken as a matter of law, not as an act of clemency.

We find no prejudicial error in the contentions that are made for reversal or in any other matters that have been brought to our attention under Rule 11 (f).

Affirmed.

CONCURRENCE

JOHN I. PURTLE, Associate Justice

I concur in the results of the opinion of this court but wish to comment on a portion of the opinion dealing with death qualified juries. The majority correctly states that persons who are unalterably opposed to imposition of the death penalty should be excluded and I agree. I think Witherspoon is in accord with this view. The mistake made in some trial courts is in excluding persons who have moral or religious scruples against the death penalty but who would agree to impose it if the law and the circumstances warrant it in the case being tried. Witherspoon never intended to exclude this type juror. Neither did it indicate that only those who favored the death penalty should comprise trial juries. I think the correct procedure on this controversial issue lies somewhere between excluding prospective jurors who have scruples against the death sentence and including

only those who have no scruples against imposing such a penalty. There is a readily apparent difference in the probable verdict of a jury composed of 12 people have scruples against the death penalty and 12 others who unquestionably favor it. It takes a mixing from both categories to form a jury which is representative of the community. Only those unalterably opposed to the death penalty and those who actively support it should be excluded from serving when death is the possible penalty.

I have never thought that all or even most people who favor the death penalty are barbarians in modern society. However, I do feel that a jury composed of only such persons is not representative of any community. Neither would a jury composed only of those having scruples against the death penalty represent the community. The selection of jurors should not favor the accused nor should it favor the state. A properly selected jury enters upon its duties slanted toward neither side. Thus selected, it would not be proper to refer to the jury as a death qualified one. This controversy would disappear if the sentencing process utilized a different jury from the one which decided the question of guilt. This could be accomplished by either having a second jury or allowing the trial court to impose sentence. A second jury would be asked to consider aggravating and mitigating circumstances and vote on sentencing the person found guilty. In either event the law and our procedure would have to be amended to provide for such a process. Appellant's trial was conducted in accordance with present law and procedure.

The majority states the most cowardly and contemptible criminals are the ones who seek to prevent a death qualified jury. I am of the opinion that an accused is not considered to be a criminal, at least in the case being tried, until after he has been convicted. The right to an impartial jury as guaranteed by the Sixth Amendment to the United States Constitution is not,

in my opinion, a favored position not enjoyed by others. Everyone is entitled to the protection of our Constitution.

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DENISE SELBY
DEPUTY

November 21, 1983

Dan Stripling
Attorney at Law
P. O. Box 388
Clinton, AR 72031

Re: CR83-39 Ricky Ray Rector
v. State of Arkansas

Dear Mr. Stripling:

The Court made the following order in the above styled case today:

"Petition for Rehearing is denied."

Sincerely yours,

Dona L. Williams

Dona L. Williams, Clerk

DLW:rh

cc: M. Watson Villines, II
Alice Ann Burns
Lucy Glover
Michael Gaines
Willis Sargent
A. L. Lockhart

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83-6080

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IN THE

SUPREME COURT of the UNITED STATES

October Term, 1983

No. _____

RICKY RAY RECTOR.....Petitioner

vs.

STATE OF ARKANSAS.....Respondent

MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

The petitioner, Ricky Ray Rector, who is now held on death row in the Tucker Unit of the Arkansas Department of Corrections, asks leave to file the attached Petition for a Writ of Certiorari to the Supreme Court of the United States without payment of costs and to proceeds "in forma pauperis" pursuant to Rule 46 of the Rules of the Supreme Court.

The petitioner's affidavit in support of this motion is attached hereto.

Clarence Daniel Stripling
CLARENCE DANIEL STRIPLING
Counsel for Petitioner
STRIPLING & MORGAN
P. O. Box 388
Clinton, Arkansas 72031

CERTIFICATE OF SERVICE

I, CLARENCE DANIEL STRIPLING, counsel for petitioner herein, do hereby certify that a sufficient number of true and correct copies of the foregoing motion and affidavit have been served on opposing counsel this 6th day of January, 1984, by mailing said copies, first class postage prepaid, to the Honorable J. Steven Clark, Office of the Attorney General, Justice Building, Little Rock, Arkansas 72201.

Clarence Daniel Stripling
CLARENCE DANIEL STRIPLING

RECEIVED
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IN THE

SUPREME COURT of the UNITED STATES

October Term, 1983

No. _____

RICKY RAY RECTOR.....Petitioner

vs.

STATE OF ARKANSAS.....Respondent

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, RICKY RAY RECTOR, being first duly sworn, depose and say that I am the Petitioner, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

Imposition of the death sentence in my case violated the Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

Yes___ No X

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

AMERICAN Transportation $6,386.00 (per year)
(Wards)

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

Yes____ No X

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

_____

3. Do you own any cash or checking or savings account?

Yes_____ No X

a. If the answer is yes, state the total value of the items owned.

_____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable proeprty (excluding ordinary household furnishings and clothing)?

Yes_____ No X

a. If the answer is yes, describe the property and state its approximate value.

_____

5. List the persons who are dependent upon you for support and state your relationship to those persons.

None

I understand that a false statement or answer to any

questions in this affidavit will subject me to penalties for perjury.

Ricky Ray Rector
RICKY RAY RECTOR

STATE OF ARKANSAS
COUNTY OF VAN BUREN

Subscribed and sworn to before me this 11th day of January, 1984.

Don Stripling
Notary Public

(SEAL)

My commission expries: 3/15/84